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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

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JUN 23 1997

COMMENTS OF AT&T CORP. ON WAIVER REQUEST OF TELCO
COMMUNICATIONS GROUP

Federal Communications Commission
Office of Secretary

Pursuant to the Commission's Public Notice (DA 97-943), AT&T Corp. ("AT&T") hereby comments on the petition of Telco Communications Group, Inc. ("Telco") for a waiver of the interim compensation requirements in the Commission's Orders in this docket.¹

Telco's petition seeks a waiver of Section 64.1301 of the Commission's Rules, which requires Telco to contribute a portion of the monthly \$45.85 in per phone payphone compensation that interexchange carriers ("IXCs") must pay payphone service providers ("PSPs") during the interim compensation period.² The Commission's Rule requires each

¹ Report and Order, FCC 96-388, released September 20, 1996 ("Order"); Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order") (collectively "Payphone Orders"). These orders were appealed by numerous parties and are consolidated before the United States Court of Appeals for the D.C. Circuit in Docket No. 96-1394.

² Telco's petition (pp. 1-2) incorrectly states that the interim period extends until November 5, 1997. The

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participating IXC to contribute to this monthly amount based on its share of annual revenues. Telco asserts that the assessment against it is unfair, because it receives very few calls from payphones. Therefore, Telco seeks a waiver permitting it to pay compensation on a per-call basis. Telco's petition is ill-timed and inadequate.

As a threshold matter, Telco's waiver petition should be held in abeyance until the Court of Appeals issues its decision on the pending appeals. On appeal, AT&T, Telco and other IXCs argue that the Commission's interim compensation rules are arbitrary and unfair, because they fail to include payment obligations for local exchange carriers and smaller IXCs who also receive calls from payphones. Thus, all IXCs subject to the interim compensation rules are required to subsidize calls handled by other carriers. Telco is not alone in this regard.

Accordingly, and especially given the advanced state of the appeal,³ it is inappropriate to consider Telco's waiver request until the Court of Appeals acts on the pending

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Reconsideration Order (¶ 6) makes clear that the interim period ends on October 6, 1997.

³ The Court has given the appeal expedited treatment with the concurrence of the parties, including the Commission. Oral argument was held on May 13, and the case is now fully submitted.

appeal. If the Court vacates or reverses the interim compensation rules, the Commission will most likely have to revisit them in their entirety. The Commission should not complicate such a review by granting a waiver before the Court issues its decision.

More fundamentally, however, Telco's petition does not demonstrate that its waiver would not cause additional burdens for other carriers.⁴ The Commission's interim compensation rules apportion the payment obligation among IXCs based on the acknowledged fact that most carriers cannot track most calls from payphones for purposes of calculating payphone compensation. Thus, even if Telco itself can track all such calls, this does not change the circumstances for other IXCs.

Moreover, unlike the earlier waiver granted to AT&T of the Commission's dialaround compensation rules, Telco's petition would affect the payment obligations of other

⁴ Telco's petition (p. 3), incorrectly states that the Reconsideration Order (§ 129) gives IXCs "the option of paying on a per-call basis" during the interim period. However, the referenced portion of the Reconsideration Order states only that individual IXCs and PSPs "have the option . . . of mutually agreeing to pay per-call compensation for all or a portion of a particular carrier's share of the interim flat rate" (emphasis added). Telco's petition presents no evidence that any PSP agrees to its request.

IXCs.⁵ In fact, if the Commission grants the requested waiver, it will directly impact the financial rights and obligations of other parties under the Payphone Orders. Indeed, the entire purpose of Telco's waiver request appears to be an effort to shift most of its obligations to other carriers.⁶ Given the already enormous burdens imposed by the Commission's Payphone Orders, AT&T opposes any waiver that would assess additional costs on other IXCs.

⁵ Operator Services and Pay Telephone Compensation, DA 96-1612, released December 29, 1994, ¶ 9 ("obligations of the other IXCs required to pay compensation to [payphone operators] are not affected by our grant of this waiver").

⁶ Petition, p. 9 (granting waiver will "ensure that Telco is not unfairly burdened by being required to subsidize the calls of other carriers").

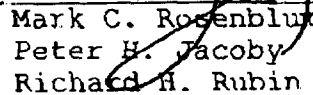
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WHEREFORE, the Commission should defer action on this request until the Court of Appeals issues its decision on the pending appeals, and it should not grant Telco's requested waiver unless it assures that the waiver will not impose additional costs on other IXCs.

Respectfully submitted,

AT&T CORP.

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June 3, 1997

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 3rd day of June, 1997, a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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